



# **Ofcom's consumer policy consultation**

A response by ICSTIS

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# Section One

## Executive Summary

ICSTIS welcomes the opportunity to comment on this consultation and is pleased that Ofcom has brought forward this approach for developing a consumer policy, integrated with the need to develop and stimulate competition by promoting it where appropriate. We are keen to support Ofcom in any ways we can to assist in delivering this approach.

Through the answers we provide to the specific questions raised in the consultation document we identify the following points of substance:

- ❑ **Citizens and consumers** - In broad terms we would agree with the distinction between consumer and citizen that has been drawn in the consultation document but we note and broadly support the comments made by the Ofcom Consumer Panel on this issue. Policy making needs to balance the tensions between allowing most consumers to purchase what they want with the minimum of ease whilst providing a necessary level of restriction to prevent others, such as children, from accessing that which may not be judged as generally suitable for them.
- ❑ **Vulnerable consumers** - ICSTIS agrees with Ofcom's position on vulnerable groups but note that not a great deal of weight is given to the issue in the paper. All regulators need to pay regard to those in the community who for a variety of reasons may not be "an average consumer" and who may be in need of special protection. Again, this needs to be balanced with the need to set regulations which are proportionate and not so overly restrictive as to undermine innovation and the ability of suppliers to provide services to most consumers.
- ❑ **Objectives for a consumer policy** - In broad terms we would agree with the objectives as set out in paragraph 3.61 of the consultation document. We note in our detailed response that communications industries and markets are fast changing; not static. This can, and no doubt will, bring enhanced benefits of choice and competition to consumers with the possibility of new services. However, such markets can also pose threats to those consumers who are not early adopters of the technology (due to a lack of knowledge) and who do not understand the proposition, service and any related costs. In this context regulators need to be prepared to apply proportionate regulation in order that consumers can secure the benefits that technology can bring without incurring the harm that might otherwise arise because the market was not able to self-correct soon enough to provide the level of protection necessary through competition alone.
- ❑ **Effective consumer protection** - We would broadly support the elements of an effective consumer protection regime outlined in paragraph 4.13 of the consultation paper. We would also add that well designed regulations governing supplier behaviour needs itself to be the product of effective and solid legislation. We also make the point that any consumer protection regime which can give incentives to suppliers to comply with regulation should not be lost.
- ❑ **Regulations and rights** – We would support your proposals for priorities for regulations outlined in paragraph 4.61 to 4.66 and are keen to work with Ofcom to support these initiatives that are proposed.
- ❑ **Consumer information, awareness and empowerment** - Whilst broadly supportive of the priorities outlined in respect of consumer awareness, we do take the view that this

issue, which along with consumer empowerment, can be a bulwark against rogue traders and various forms of mis selling – is in need of a wider strategic perspective and plan. We appreciate that the market should be best able to deliver meaningful consumer information about various products and services available in the communications market. However, we think that an outcome of this, which appears to focus your resources on the Consumer Advice section of the Ofcom website could be more ambitious whilst not losing sight of your regulatory principles outlined in 5.13. Not all consumers have web access, especially those who may be more vulnerable and even if they did not all consumers obtain all the information they need to make decision only through the web, accepting that is becoming a powerful medium for communicating and information sharing.

□ **Monitoring and enforcement** - We support the assessment of priorities in the consultation paper.

## Section Two

### Response to specific questions

Before setting out our answers to specific questions raised by Ofcom, we would observe that we are somewhat uncertain as to whether you mean to exclude all content regulation from this exercise (page 13 of the consultation) or just broadcast content (page 2 of the consultation). The logic of the statement on page 2 appears clearer than the logic of what could be taken from the statement on page 13. Taking premium rate regulation – our area of unique expertise – we are dealing almost exclusively with content issues and many of the issues we handle are consumer-focused, not citizen-focused. A recent example is Call TV Quiz Services where we are regulating the premium rate consumer protection elements of what is a broadcast content service. We explain more about this in our answer to Question 1 below. We would therefore encourage Ofcom to ensure that the final position on consumer policy has had full regard to content issues whether handled through another project or not.

We have limited our responses to areas where we have a specific and direct interest and a competence to respond.

#### **Q1 Do you agree with the proposed distinction between citizen and consumer interests?**

In broad terms we would agree with the distinction between consumer and citizen that has been drawn. However, we would also note that the distinction can be artificial and may have the impact of restricting the relevant scope that Ofcom applies to consumer policy. We note that the Consumer panel observes in Annex 9 that in their view the distinction is of relatively small significance and we agree.

We would observe that as a regulator of premium rate services we have a remit to protect consumers and at the same time some of our activity is designed to protect citizens, especially those who may be more vulnerable such as children. They sometimes have desires to access services which are only suitable for those over 18. Setting policy in this context inevitably creates tensions which all regulators need to balance as they attempt, through all forms of evidence and understanding of acceptable societal standards, to set regulatory requirements that allow most consumers to purchase what they want with the minimum of ease whilst providing a necessary level of access restriction to prevent others, such as children, from accessing that which may not be judged as generally suitable for them. This raises the related issue of the difference between what is in the interest of consumers and what some consumers “want”. This distinction is not drawn clearly enough in paragraph 3.14.

#### **Q2 Do you agree with Ofcom’s position on vulnerable consumers?**

Yes, ICSTIS does agree with Ofcom’s position on vulnerable groups but we note that not a great deal of weight has been given to the issue in the consultation paper. All regulators need to pay regard to those in the community who for a variety of reasons may not be “an average consumer” and who may be in need of special protection. Again, this needs to be balanced with the need to set regulations which are proportionate and not so overly restrictive as to undermine innovation and the ability of suppliers to provide services to most consumers. We face this issue in premium rate services regulation especially in areas of child protection where we have taken the view, following consultation on our Codes of Practice over a number of years that children need to be protected from access to certain forms of services meant for adults only. Principally this is in order to prevent them suffering harm from (a) inappropriate content to them as minors (b) costs beyond their means to pay and (c) the potential risk from contact that may arise from meeting adults as a consequence of using a service such as a sexual entertainment/chat service. We take the view that child protection will be a growing area of potential “vulnerability” given the propensity for children and young people to be early adopters of new technologies and to own new technologies in their own right. We also note the research undertaken by the NCC in this area which leads us to be supportive of further work in this area as Ofcom moves forward.

**Q3 Do you agree with the proposed high level objectives for consumer policy?**

In broad terms we would agree with the objectives as set out in paragraph 3.61 of the consultation document. We would however observe that the communications industries and markets are fast changing; not static. This can, and no doubt will, bring enhanced benefits of choice and competition to consumers with the possibility of new services. However, such markets can also pose threats to those consumers who are not early adopters of the technology and do not understand the proposition, service and any related costs. In this context the regulators need to be proactively evaluating alongside the evidence base, the potential benefits and risks that may arise from such change. They then need to be prepared to apply proportionate regulation in order that consumers can secure the benefits that technology can bring without incurring the harm that might otherwise arise because the market was not able to self-correct soon enough to provide the level of protection necessary through competition alone. In this context regulators may take an active stance in encouraging the market to promote and provide consumers/citizens with the appropriate and necessary tools so that they can take steps to protect themselves and their family members from certain activities that they may not want, an example being access controls on telephones to restrict use of certain premium rate services that may be inappropriate for children and which may otherwise lead to “bill shock”.

**Q4 Do you agree with that the proposed indicators provide an appropriate basis for monitoring consumer interests? Are there any other indicators that should be used?**

It is not easy to determine a precise answer to this question as there is limited context provided as to where these indicators have been drawn from. Without that information it is difficult to advise on whether they are appropriate.

**Q5 Do you agree that Ofcom should publish an Annual Report on the Consumer Interest?**

Yes we do agree that Ofcom should publish an annual report of the consumer interest. However, whilst we acknowledge the scope of this review, as outlined in paragraph 2.7 of the consultation document, we nevertheless take the view that any such annual report should provide a complete picture of the consumer interest and that drawing a boundary around and excluding content issues in certain contexts, such as premium rate services, can be artificial. This may require more thought.

**Q6 Do you agree with the characteristics identified of effective consumer protection?**

We would broadly support the elements of an effective consumer protection regime outlined in paragraph 4.13 of the consultation paper. We would also add the following points:

- Well designed regulations governing supplier behaviour needs itself to be the product of effective and solid legislation and needs to be implemented with sufficient speed. Lengthy processes for consultation, especially at the EU level, can sometimes prove to be a barrier as is shown in the case study at Annex 8;
- Whilst an effective enforcement regime is necessary, any consumer protection regime which can give incentives to suppliers to comply with regulation should not be lost, whilst recognising that a minority will always look for loopholes for which enforcement action will be necessary.

**Q7 Do you agree with the assessment and priorities for rights and regulations?**

In broad terms we support these priorities and would also encourage Ofcom to give further consideration to the risks associated with consumer fraud issues involving electronic networks and the consequential need to enhance relationships with the appropriate law enforcement authorities as well as ensuring that they understand and can prioritise such issues.

In terms of priority one, we support Ofcom’s proposal to develop an early warning system by improving the sharing of complaints data being received by the various interested parties

including ICSTIS. Today we have good relationships with Ofcom which allows for this sharing to take place in an ad hoc manner and we agree that this requires greater structure to improve its effectiveness to all parties. In terms of the second priority, we would be keen to work with Ofcom to try and identify further incentives to compliance in the market place with a view that we could reduce the need for enforcement action, albeit making it swift and effective where it is necessary.

**Q8 Do you agree with the assessment and priorities regarding consumers' awareness?**

Whilst broadly supportive of the priorities outlined we do take the view that the issue of raising consumer awareness – something which along with consumer empowerment can be a bulwark against rogue traders and various forms of mis selling – is in need of a wider strategic perspective and plan.

Turning to the priorities identified, we do support them, subject to what we say above, but would make two points about scams:

- Any scam awareness raising in this area needs to be carefully co-ordinated with the OFT – a body who are also resourced this year to give this activity priority; and
- Whilst it is right to identify “scams” and alert the consumer, care should be done to do this in a way that does not make consumers fearful of all or many forms of electronic communication services. The market and underlying technologies are changing fast. Many consumers do not fully understand the benefits that may be possible and this can be inadvertently undermined if the media present new emerging services as “scams” in their entirety. This undermines consumer confidence and trust and reduces the chances of innovation.

**Q9 Do you agree with the assessment and priorities regarding complaints handling and redress?**

In broad terms we would agree with the assessment and proposed priorities albeit we do not have a direct relationship with Otelo and CISAS so are not qualified to comment on the issues you raise in that regard.

More widely, as a body that takes public complaints we recognise that consumers can make their complaints to a variety of bodies about various issues relating to communications issues. We would support a view that says that Ofcom should be proactive and take a lead in establishing with all the various referral routes for consumers to the various ADR or regulatory bodies that their sign-posting arrangements are effective. This could be done through periodic mystery shopping exercises to establish the effectiveness of those referral routes with follow-up plans to improve the advice where gaps are found. We would be interested in supporting Ofcom in such an approach.

**Q10 Do you agree with the assessment and priorities regarding monitoring and enforcement?**

Yes we entirely agree with this assessment of priorities and welcome the more vigorous approach to enforcement that is now emerging from Ofcom. As is identified in paragraph 4.89, progress has been made between Ofcom and ourselves to enhance the procedures in place for referrals from us to Ofcom. We are keen to develop this and where necessary draw in other bodies to share the best practice that is emerging from these arrangements. We wonder that this should not be limited to Otelo and CISAS and that it might involve others such as the OIC and the Gambling Commission in due course.

**Q11 Do you agree with Ofcom's approach to the provision of consumer information?**

We appreciate that the market should be best able to deliver meaningful consumer information about various products and services available in the communications market. However, we think that an outcome of this, which appears to focus your resources on the Consumer Advice section

of the Ofcom website could be more ambitious whilst not losing sight of your regulatory principles outlined in 5.13. Not all consumers have web access, especially those who may be more vulnerable and even if they did, not all consumers obtain all the information they need to make decision only through the web, accepting that is becoming a powerful medium for communicating and information sharing. Accordingly Ofcom should re-consider the commitments being suggested here as on paper more could be done, in relatively limited ways, to give consumers confidence, information and understanding, especially in a dynamic, fast-changing market where the pace of technological innovation sometimes is faster than the speed at which many consumers can comprehend and thus make new informed choices.

However, we would nevertheless support any developments of the Ofcom website which aided user's navigation and search. This should be treated as a priority given the current Ofcom website is not as well designed and navigable as it should be.

The answer to this question in part answers the more specific question raised in paragraph 1.28. In broad terms, as we set out above, we take the view that the overall approach is not robust enough given that markets are not perfect, the potential for asymmetry of information that exists in a fast-changing communications market and that not all consumers have web access or indeed find that the best way to secure information about market issues.

**Q12 Do you agree with Ofcom's conclusion on consumer awareness of suppliers and services?**

We have no comments to offer to this question.

**Q13 Which of the options on comparative price information, if any, do you favour? Are there other options Ofcom should consider?**

We have no comments to offer on this question.

**Q14 What is your opinion about the ideas for generating awareness of price comparison information?**

We have no comment to offer on this question.

**Q15 Do you agree with our proposed approach regarding the Quality of Service initiatives?**

We have no comment to offer on this question.

**Q16 Do you agree with our proposed approach regarding switching processes?**

We have no comment to offer on this question.



## **Annex 1: An introduction to ICSTIS**

ICSTIS is responsible for regulating premium rate services in the UK (see below for definition). ICSTIS consists of a Committee that is supported by a full time Secretariat. The Committee consists of up to twelve members, all appointed in their individual capacities. Up to three members of the Committee are currently active in the premium rate industry. ICSTIS is committed to a co-regulatory approach and works closely with the premium rate industry to ensure that its decision-making meets the principles of good regulation Through its Code of Practice, ICSTIS regulates services in their entirety — their content, promotion and overall operation. ICSTIS is a non-profit making limited company.

### **Premium rate services**

Premium rate services offer some form of content, product or service that is charged to users' phone bills. The money paid by users for services is shared between the telephone company carrying the service (network operator) and the organisation providing the content (service provider). This arrangement is called a 'revenue share'. There must be revenue sharing arrangements in place for services to be considered premium rate.

Premium rate services typically offer information and entertainment services via fixed or mobile phone, fax, PC (e-mail, Internet, bulletin board), or interactive digital TV. There are many sorts of services targeting both consumers and businesses, examples of which are:-

- Ringtones
- Sports alerts
- TV voting
- Competitions
- Directory enquiry
- Chat and information services.

They currently range in cost from 10p to £1.50 per call or minute (typical prices from a BT landline). Premium rate mobile services often use short access codes - typically four or five digit numbers, and are usually be shown on phone bills as 'premium rate call' or 'high premium rate service'. Premium rate charging for mobile content is generally on a per text message or per transaction basis and include services such as ring tones, logos, goal alerts and video clips.

UK-based landline premium rate services are carried on '09' dialling codes and Directory Enquiry (DQ) services on 118xxx codes.

We estimate that public spending on premium rate services grew by some 5% in 2005 and now exceeds £1.5 billion per annum.

### **Funding**

We are funded by a levy on service providers which is collected by network operators. Our budget is consulted on with all stakeholders each year and is ultimately approved by Ofcom, the regulator for the UK communications industry.

### **Ofcom**

Under current arrangements the regulatory regime for premium rate services follows a co-regulatory approach, with the primary role for consumer protection falling to ICSTIS. Ofcom's role is to underpin the co-regulatory regime through its condition regulating premium rate services. This works as a 'backstop' power, and has been designed to be used only following a failure by the relevant provider of premium rate services to comply with a direction by ICSTIS for the purpose of enforcing the Code.

### **Premium rate services across the world**

The International Audiotex Regulators Network (IARN) was set up in 1995 as a forum for exchanging information and good practice among its members. The members are all involved in the regulation of, or setting standards for, content and promotion of all premium rate services ('audiotex') in their own countries. Most of these bodies have been appointed to protect the interests of the general public. Their structure and methods of control vary from country to country; nevertheless independent consumer protection formally exists. It is not left to the industry alone to police itself. Members of IARN meet twice a year and the meetings are used by members to set benchmarks for appropriate regulation.

### **Enforcement**

When a breach of our Code of Practice is upheld, the service provider must immediately amend the service and/or its promotional material so that it complies with the Code.

In most cases, service providers found in breach of the Code will be charged to cover the cost of our investigation.

In addition, we have the power to impose sanctions on service providers. We will consider all relevant factors when deciding whether to impose a sanction, including the severity of the breach(es), the scale of harm caused and the service provider's breach history.

Sanctions range from:

- issuing formal reprimands
- ordering the service provider to submit future promotions and services to us for prior approval for a set period
- ordering the service provider to pay reasonable and valid claims for compensation
- imposing fines
- barring access to services
- banning named individuals from operating services for set periods.

ICSTIS received almost 27,000 complaints about premium rate services in 2005 – 66% fewer than in 2004. ICSTIS' Contact Centre handled over 200,000 enquiries in 2005. The ICSTIS website, together with improved automated call handling systems, also enabled over 500,000 general enquiries, such as premium rate number checks, to be handled successfully.